

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|--------------------------|---|----------------------|
| UNITED STATES OF AMERICA |) | CR No. 0:02-1173-JFA |
| |) | |
| v. |) | ORDER |
| |) | |
| ROBERT M. BROOKS |) | |
| _____ |) | |

The defendant has filed a motion requesting that the court compel the government to file a motion under Rule 35 of the Federal Rules of Criminal Procedure. The government has responded to the motion indicating that the defendant has not provided substantial assistance to the government in investigating or prosecuting another person. The government also notes that it does not wish for the defendant to make a proffer.

The government ultimately retains discretion to determine whether to actually file a motion for a reduction of sentence. This court can only review the government's refusal to do so if such decision was based upon an unconstitutional motive or upon a factor not rationally related to a legitimate governmental end. *Wade v. United States*, 504 U.S. 181 (1992); *United States v. Divens*, 650 F.3d 343, 345 (4th Cir. 2011) (citing *United States v. Butler*, 272 F.3d 683 (4th Cir. 2001)).

Because the defendant has failed to make a substantial threshold showing under *Wade*, the motion to compel the government to file a Rule 35 motion must be denied (ECF No. 1048).

IT IS SO ORDERED.



January 30, 2013
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge